S T A T E O F M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of **MICHIGAN GAS UTILITIES CORPORATION** for a gas cost recovery reconciliation proceeding for the 12-month period ending March 31, 2011	))))))	Case No. U-16145-R

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on September 14, 2012.

Exceptions, if any, must be filed with the Michigan Public Service Commission, 4300 West Saginaw, Lansing, Michigan 48917, and served on all other parties of record on or before October 5, 2012, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before October 19, 2012. **The Commission has selected this case for participation in its Paperless Electronic Filings Program. No paper documents will be required to be filed in this case.**

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

MICHIGAN ADMINISTRATIVE HEARING SYSTEM
For the Michigan Public Service Commission

Theresa A. Sheets

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Theresa A. Sheets
Administrative Law Judge

September 14, 2012
Lansing, Michigan

S T A T E O F M I C H I G A N

MICHIGAN ADMINISTRATIVE HEARING SYSTEM

FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of	)	
MICHIGAN GAS UTILITIES CORPORATION	)	
for a gas cost recovery reconciliation	)	
proceeding for the 12-month period ending	)	Case No. U-16145-R
March 31, 2011	)	
______________________________________	)	

PROPOSAL FOR DECISION

HISTORY OF PROCEEDINGS

On June 30, 2011, pursuant to 1982 PA 304, MCL 460.6h *et seq*., Michigan Gas Utilities Corporation (MGUC or Company) filed with the Michigan Public Service Commission (Commission) its application, with supporting testimony and exhibits. MGUC requests approval of its proposed gas cost recovery (GCR) reconciliation for the 12-month period ending March 31, 2011.

Pursuant to due notice, a prehearing conference was held in this matter on September 8, 2011. At that time, the Michigan Attorney General, Bill Schuette (Attorney General or AG), and the Residential Ratepayer Consortium (RRC) were recognized as Intervenors. Commission Staff (Staff) also entered its appearance and participated in the hearing. A schedule was then established for the remainder of the proceeding.

An evidentiary hearing was held on March 15, 2012, at which time the pre-filed testimony of the witnesses was bound into the record, exhibits were received into evidence, and cross-examination was conducted. On April 12, 2012, briefs were filed by Staff, MGUC, and the Attorney General. On April 26, 2012, reply briefs were filed by MGUC and the Attorney General. The record consists of 146 pages of transcript and 27 exhibits.

DISCUSSION AND FINDINGS

A. Testimony of Parties

1. MGUC

MGUC presented the testimony of two witnesses, the first of which was Mr. David J. Tyler, Manager of Regulatory Affairs for the State of Michigan.[1] Mr. Tyler presented MGUC's calculation of the total cumulative over-recovered balance of $3,458,727 as of March 31, 2011,[2] which includes the 2009/2010 GCR Net Under-Recovered Balance of ($3,875,545). 2 Tr 60, 62-63; Exhibit A-4; Exhibit A-6.

Mr. Tyler addressed the methodology used by MGUC to price company-use and lost-and-unaccounted-for gas, injections into storage and withdrawals from storage, and explained the methodology used by MGUC for recording the monthly cost of gas and for computing monthly interest. 2 Tr 60-63; Exhibit A-4, Exhibit A-6.

[1] Mr. Tyler's direct and rebuttal testimony and testimony on cross-examination can be found at 2 Tr 49-111. The witness sponsored Exhibits A-2, A-3, A-4, A-5, A-6, A-9, and A-14.
[2] $3,381,412 in cumulative over-recovery, plus $77,315 in total interest revenue

Finally, Mr. Tyler explained the process that led to MGUC being over-recovered in this proceeding. He testified that MGUC was under-recovered until December 2010, at which time MGUC not only eliminated its prior GCR period under-recovery, it also achieved a slight over-recovery. 2 Tr 66. He stated that when December's 45-Day report was prepared on January 15, 2011, MGUC became aware that its under-recovered balance had turned around and become positive. *Id.* In response, the Company reduced its GCR factor for February in an effort to decrease any potential over-recovery that may have accumulated with January's higher factor. *Id.* Mr. Tyler continued by saying that the months of December and January were colder than normal. 2 Tr 66-67. Based upon this information, MGUC again reduced its GCR factor for the month of March, but it was not sufficient time to eliminate the MGUC's accumulated over-recovered balance. 2 Tr 67. Mr. Tyler explained that he was reluctant to reduce the GCR factor any lower for March because, based on prior years, March had been significantly warmer and reducing the GCR factor any lower would risk the potential of being under-recovered once again, should the weather not cooperate. *Id.* Mr. Tyler testified that expecting MGUC to achieve a zero over/(under)-recovered balance is not reasonable because there are several factors, over which MGUC has no control, which play a part in the Company's ability to recover its gas costs. *Id.*

MGUC's second witness was Kent E. Huzzey. Mr. Huzzey is employed by Integrys Business Support LLC, as Manager – Gas Supply for MGUC.[3] Mr. Huzzey explained that in an effort to provide reasonably priced supplies, the Company reduced its exposure to movement in the price of natural gas by purchasing thirty-seven (37%) percent of its supply at a fixed price and sixty-three (63%) percent at an index price. 2 Tr 123. He indicated that the deviation from the Plan allocation of thirty-three percent (33%) fixed prices and sixty-seven percent (67%) index price was the result of the migration of GCR sales to Gas Customer Choice. 2 Tr 123-124.

Mr. Huzzey presented testimony that the 2010-2011 Plan year was somewhat unusual for gas pricing because the Plan generally produced prices that were $1.19/MMBtu higher than actual index prices. 2 Tr 124. He attributed the discrepancy to the December 2009 NYMEX strips and referenced Exhibit A-13 which demonstrates the month-by-month basis for various pricing points, and shows the difference between forecasted prices and index. *Id.*; Exhibit A-13.

Mr. Huzzey testified regarding the methodology used for securing the fixed price supply and said that MGUC made these purchases through a Request for Proposal (RFP) process whereby the requirement is determined, an e-mail is sent to all parties with whom the Company has a contract, the bids are received, and the winning proposal is notified. 2 Tr 124-125. Mr. Huzzey referenced

[3] Mr. Huzzey's direct and rebuttal testimony and testimony on cross-examination can be found at 2 Tr 112-181. The witness sponsored Exhibits A-1, A-7, A-8, A-10, A-11, A-12, A-13, A-15, revised A-16 and revised A-17.

Exhibit A-7 as containing specific information as to the date of the RFP, term, volumes, prices, and supply location. 2 Tr 125-126.

Mr. Huzzey also described MGUC's methodology for securing the index price supply saying that the majority of the Company's index price purchases are made on a monthly basis through the RFP process. 2 Tr 126. He indicated that this is done throughout the Plan year. *Id.* He testified that the volume is determined by the GCR Plan and adjusted for the current storage position relative to Plan storage levels. *Id.* He said that the Company does make a multi-month index priced purchase if a base level requirement for a period can be determined. *Id.* Mr. Huzzey pointed to Exhibit A-7 as the exhibit that provides specific information as to the term, volume prices (basis), and supply location.

In addition, Mr. Huzzey testified that MGUC purchased swing packages, totaling 1,061,137 Dth (See 2 Tr 126-127; Exhibit A-7, lines 23, 26, and 29-33), base load packages of index priced gas (See 2 Tr 227; Exhibit A-7, lines 27, 28, 24 and 25) and made non-core sales (See 2 Tr 229; Exhibit A-11). MGUC also purchased intra-monthly supplies to meet operational load requirements and to increase gas storage levels. 2 Tr 128. These purchases amounted to 547,635 Dth of supply purchased or roughly 3% of the total supply purchased for the Plan year. 2 Tr 128; Exhibit A-7.

Mr. Huzzey testified that MGUC started the Plan year with inventory greater than set forth in the Plan in all three storage fields (MGUC, ANR and Washington 10). 2 Tr 129-130; See also, Exhibit A-3, p1. MGUC adjusted monthly index purchases throughout the summer and winter to compensate for initial and subsequent storage inventory levels, resulting in storage inventories at the end of the Plan year that were below Plan levels in two of the three storage assets. 2 Tr 130-131; Exhibit A-10.

Mr. Huzzey also testified regarding MGUC's capacity utilization for the 2009-2010 Plan year and its experience with capacity release during 2010-2011 and stated that MGUC has seen substantial growth in the Choice program. 2 Tr 131-133.

2. Attorney General

Sebastian Coppola, independent business consultant, testified on behalf of the Attorney General. Mr. Coppola addressed three topics: MGUC's fixed price gas purchases under the Fixed Price Purchases Guidelines, the purchase of swing supply capacity during the winter period, and the recurring level of over- and under-recovered balances at the end of the GCR period.

Mr. Coppola testified that, in his opinion, the two primary objectives of the Fixed Price Purchase (FPP) Guidelines are to reduce the volatility of GCR costs and, concurrently, to minimize the commodity cost of gas to GCR customers over time by taking advantage of favorable market prices in light of known and reasonably foreseeable circumstances during the GCR year. 2 Tr 192.

In Mr. Coppola's analysis, he found the FPP made on September 15, 2008, and October 6, 2008, to be in conformance with guidelines. 2 Tr 193. He testified, however, that the continued FPPs made in subsequent weeks of October, 2008, were premature, unnecessary, and outside the intent of the FPP Guidelines, and unreasonable given market price information available to MGUC at that time. 2 Tr 193-194; Exhibit AG-1 (Revised). In addition, Mr. Coppola stated that the purchase made by MGUC on October 29, 2008, for 450,000Dth of winter gas supply exceeded the authorized fixed price supply volumes stated within the FPP Guidelines. 2 Tr 194; Exhibit AG-1 (Revised). He found the variances for the FPP Guidelines to be unjustified and resulted in an unreasonable and imprudent increase in the Company's booked costs of gas sold. *Id.* Mr. Coppola testified that, based on the FPP Guidelines, the five additional fixed price purchases made in a very short time period from October 13 to October 29, 2008, limited any potential benefit from price hedging in a down trending gas price market. 2 Tr 194-196. He opined that the Company should have spread these purchases over the months of November 2008 to January 2009. 2 Tr 195-196. Mr. Coppola testified that by October, 2008, a clear trend of declining gas prices had developed both in the spot market and in the futures market, so accelerating fixed price purchases was unjustified by any need to lock in prices in anticipation of immediate or near term price increases. 2 Tr 198. As a result, Mr. Coppola recommended the Commission disallow $791,050 of gas costs from the GCR reconciliation. 2 Tr 200.

With regard to swing supply, Mr. Coppola took issue with the swing supply capacity arrangement MGUC had with Supplier 4 and argued that when comparing Supplier 4's rate to the average cost of $.065 for the other three same-source suppliers (1, 2, and 15), the Company paid a premium of $.015 per Dth/day for the contract with Supplier 4. 2 Tr 202. Mr. Coppola was concerned because he felt that the Company witnesses did not explain why it was necessary to agree to a higher price when it could have purchased more of the lower priced capacity from the other three same-source suppliers. 2 Tr 203. Mr. Coppola testified that Supplier 4 did not provide a commodity price advantage over the other suppliers and, thus, Mr. Coppola recommended that the Commission disallow at least $15,416 (or as much as $30,831) from the recovery of gas costs because other options existed. 2 Tr 203-204.

As a final matter, Mr. Coppola expressed concern over what he considers MGUC's repeated large GCR year-end over- and under-recoveries. Mr. Coppola testified, "[e]very year, the Company states that it has made improvements to its GCR factor-setting process. Yet, each year it continues to report large over or under recovery amounts." 2 Tr 206. Mr. Coppola pointed out that large over- or under-recoveries shift gas costs from one year to the next and can exacerbate increases in gas costs from one year to the next. 2 Tr 205. He went on to note that the shift in recovery of a large portion of gas costs potentially results in different customers paying the proper cost of gas for the year. *Id.* As a result, Mr. Coppola recommended that the Commission issue a warning to MGUC to take other necessary steps to significantly reduce the amount of under- or over-recovery for the next GCR period and, if this does not occur, that the Company could face a potential disallowance of GCR costs recovery. 2 Tr 207.

3. <u>Staff</u>

Nora B. Quilico, Public Utilities Engineer for the Michigan Public Service Commission testified on behalf of Staff.

Ms. Quilico focused on End Use Transportation (EUT) customer tariff rules. Specifically, she expressed concern over EUT customers' ability to build up a positive balance on the Company's system up to the customer's Authorized Tolerance Level (ATL) balance. 2 Tr 45. She noted that, under most circumstances, the EUT customer has unlimited access to its positive ATL balance and is not required to notify the Company if it plans on using any or all of its ATL balance. *Id.* According to Ms. Quilico, MGUC does not have the right to restrict an EUT customer's access to its ATL. *Id.*

Although Ms. Quilico noted that the GCR customers were not hurt by the EUT transportation customer's tariff-authorized actions on August 4, 2010, she indicated that had circumstances been different than those on August 4, 2010, it could have increased the average GCR cost of gas for the year. 2 Tr 46. Ms. Quilico stated that MGUC fills its storage and secures most of its fixed price supply for the winter during the injection season (April-October). *Id.* These actions provide GCR customers with the benefit and security of having at least fifty percent of their supply at a fixed price during the winter season. *Id.* She went on to say that,

> If an EUT customer (or multiple EUT customers) chooses to withdraw its entire ATL balance on a high demand winter day without providing MGU notice (according to tariff rules, the EUT customers do not have to notify the Company of their intentions regarding ATL balance usage), the Company will be forced to buy incremental flowing supplies at current market prices to serve both GCR customers and the EUT customers. The current market price may be substantially higher than MGU's WACOG (weighted average cost of gas). This avoidable incremental cost will be charged to the GCR customers and not the EUT customers.

2 Tr 46.

In order to avoid this type of potential situation from occurring in the future, Staff recommended that MGUC consider requiring daily balancing for EUT customers and that the Company conducts a feasibility study detailing how it would transition to a daily balanced system. 2 Tr 47. The study would be utilized when the Company submits a proposal to the Commission to obtain approval of a daily balanced system. Ms. Quilico testified that Staff recommends that the Commission order MGU to file such a proposal in its next general rate case or by means of a separate case application. *Id.* Ms. Quilico noted that SEMCO, a similarly-sized Michigan utility, employs daily balancing which ultimately provides GCR customers with better protection against unplanned spot market purchases. *Id.* Alternatively, Staff recommends that if the feasibility study finds that MGU is not able to implement daily balancing, the Commission should order the Company to reflect this in either its next general rate case or in a separate application that contains possible revisions to the current Transportation Tariff rules, other than daily balancing, that would allow for better protection of the GCR customers. 2 Tr 48.

4. <u>The Residential Ratepayer Consortium</u>

Frank J. Hollewa, owner of EPEC consulting, testified on behalf of the Residential Ratepayer Consortium (RRC). He was retained by RRC to make an independent analysis and evaluation of the reconciliation filing made by MGUC in this matter. 2 Tr 31.

Mr. Hollewa testified that he examined all of MGUC's gas purchases in the 2010-2011 GCR period. 2 Tr 31. This included MGUC's FPPs utilizing Quartile Analysis, and Monthly and Daily purchases. *Id.* He also examined MGUC's storage operations during the winter period, its peaking service, and its utilization of firm transportation. *Id.*

Mr. Hollewa testified that he started his analysis by examining the information available in MGUC's GCR Plan filing regarding the Company's FPPs. *Id.* He noted that all of the FPPs shown on Exhibit A-7, page 1, lines 1-9, in this case were shown on Exhibit AG-2 in Case No. U-16145. *Id.* He also noted that the GCR Plan disclosed that load attrition and additional migration to GCC would increase the intended FPP percentage of annual sales from 33% to approximately 38% (actual was 37%). *Id.* He also stated that it was known that the prices of the FPP made in September and October 2008 were much higher than the current market prices. *Id.*

Mr. Hollewa recounted the historical losses the Company has experienced dating back to the 2006-2007 GCR Year and testified that the Settlement Agreement in Plan Case No. U-15700 to suspend the FPP program with the 2012-2013 GCR Year at the then existing FPP levels was correct. 2 Tr 32-33. He also indicated that the parties participated in collaborative meetings regarding the FPP program during 2010, and recommended changes were included in the 2011-2012 GCR Plan Case. 2 Tr 33.

As for MGUC's daily intra-month spot and swing purchases, Mr. Hollewa testified that only one of these purchases occurred in the April 2010 through

October 2010 period (on August 4, 2010) resulting in an increased cost of $297, which he believed did not warrant any further investigation and/or discussion. 2 Tr 33. For the November through March winter period, Mr. Hollewa testified that the purchases were necessary, timely, and competitively priced and, further testified that the Company's use of daily spot purchases and swing supply instead of FOM purchases for the entire month during the winter period was well reasoned and very effective. *Id.*

Regarding operational considerations faced by MGUC for the winter period, Mr. Hollewa testified,

> The filed GCR plan estimated 12.8 Bcf for GCR sales during the winter period. Continuing load attrition and increased GCC participation resulted in a revised sales forecast shown on Exhibit A-14. The addition of November to this forecast would have resulted in approximately 10.9 Bcf for GCR sales. MGUC had purchase commitments for 4.1 Bcf of FPP and 2.1 Bcf of Term Index for the winter period. The Company would have also assigned a high priority to maximizing the Washington 10 storage withdrawals at 1.4 Bcf. This total supply of 7.6 Bcf left only 3.3 Bcf (10.9 Bcf 0 7.6 Bcf) for storage withdrawals from both ANR (2.9 Bcf) and MGU storage (3.7 Bcf). From an operational perspective, the Company could not plan to purchase any additional monthly volumes. This was because even Normal weather would result in unutilized storage and warmer-than-normal weather that would have resulted in much larger storage balances.

Based on these conditions, Mr. Hollewa believed that MGUC correctly chose the only viable option of making spot and/or swing purchases to meet increased demand on colder days or when it occurred. *Id.* Mr. Hollewa testified that the actual supply of 12.6 Bcf was 1.7 Bcf higher than the revised sales forecast shown on Exhibit A-14. 2 Tr 34-35. He indicated that approximately 40% of the difference can be attributed to colder-than-normal weather, but the other 60% is reflective of a bad or pessimistic estimate. 2 Tr 35. He concluded, however, that an "exact" estimate for the sales forecast would not have changed his opinion regarding the operational considerations for the winter period and, further, determined that there were no negative financial consequences resulting from spot/swing purchases instead of MGU storage utilization. 2 Tr 35-36. In fact, Mr. Hollewa testified that the only negative financial consequences were to MGUC because of the additional carrying costs associated with the high storage balance. 2 Tr 36.

Mr. Hollewa believed that the monthly FOM purchase of 5,000 Dth/D for March could have been eliminated and the PEPL delivery to the Coldwater areas replaced by MGUC storage in the same area. 2 Tr 36. He, however, testified that the delivered price of the purchase was $3.89 or $1.71/Dth less than the MGUC Storage MACOG, which reduced gas costs by $265,000. *Id.* Based on these variables, Mr. Hollewa felt that the Company's objective to minimize MGUC storage withdrawals to assess the water encroachment problem was very credible and was applied uniformly throughout the winter period. *Id.*

Mr. Hollewa also went through the 20 supplier bids and, based on the order the bids were accepted, the 11,419 Dth/D from Supplier 4 on Exhibit A-7 became "the only option left to achieve the stated bid objective of up to 32,000Dth/D. 2 Tr 36-37. He noted, however, that the comparable costs associated with bids by Suppliers 1, 15, and 4 were nearly equal. 2 Tr 37.

Overall, Mr. Hollewa concluded that,

1. The swing supply arrangements on ANR SE, Consumers, and PEPL Field Zone were all necessary to provide supply for utilization at 100% of firm transportation;
2. The supply arrangements regarding ANR Benton Harbor were necessary citygate purchases to provide the additional supply for Peak Day protection;
3. The two offsetting benefits were that the Company could attempt to maximize storage as well as receiving the maximum benefits from capacity release;
4. The Peak Day estimate of 217,700 Mcf was appropriate for the 2010-2011 GCR year;
5. Non-core sales were not only financially beneficial to the GCR customers, but also facilitated the 100% utilization of Washington 10 Storage; and
6. MGUC's monthly index purchases using ANR SE were approximately 2.4 MMDth during the summer period (74% load factor) versus approximately 0.5 MMDth for purchases using Consumers; thus, the delivered cost of gas on ANR SE was an average of approximately $0.13 less expensive than deliveries using Consumers.

2 Tr 37-39.

B. Rebuttal

1. MGUC

On rebuttal, Mr. Tyler took issue with four matters contained in the testimony of Sebastian Coppola and Nora B. Quilico. In support of his rebuttal testimony, Mr. Tyler sponsored Exhibits A-18 and A-19.

a. MGUC's Over-Recovery for 2010-2011 GCR Period

In response to Mr. Coppola's testimony that this is the fourth year that MGUC has ended the GCR period with a significantly large under or over-recovery, Mr. Tyler argued that Mr. Coppola did not take into account circumstances the Company faced during the 2010-2011 GCR Period and has the luxury of hindsight when he draws that conclusion. 2 Tr 72-72.

In response to Mr. Coppola's charge that MGUC should have made monthly adjustments in the billed GCR Factor that would have reduced the cumulative over-recovery for the 2010-2011 period, Mr. Tyler stated that such a method is not supported by the actual events and information that was available to the Company at the time it was making decisions regarding its monthly billed GCR factors. 2 Tr 72. Mr. Tyler continued by saying that, when setting the monthly factor, the Company cannot know what the weather will be for the forthcoming month; what actual customer consumption and load patterns will be; or even the number of customers that will be served under the various services that the Company offers such as GCR, Gas Customer Choice (GCC), and Transportation services. *Id.* Mr. Tyler pointed out that the December 2010 balance was not known until after the January 2011 GCR factor had been set.

2 Tr 73. He testified that, once this was known, MGUC then reduced the GCR factors billed in February (by $0.450 per Mcf – more than 5.8%) and March (by an additional $1.00 per Mcf – 14.3%). *Id.*

Mr. Tyler noted that in setting the monthly GCR factor, MGUC forecasted "normal" weather. 2 Tr 74. He testified that during the previous plan period, the March 2010 weather was 16% *warmer* than normal, which resulted in an under-recovery that was "harshly criticized by Mr. Coppola." *Id.* Mr. Tyler then pointed to Exhibit A-14, which demonstrates that the actual weather turned out to be colder than normal in March 2011, which, along with the colder than normal weather experienced in January and February, significantly increased the Company's GCR revenue for that period over what had been forecasted. *Id.* He continued to argue that when setting the GCR factor for January, back on December 15th , the Company could not have known, for example, that January 2011 would be 7.2% colder than normal or, when setting the factor for February on January 15th, that February would be 7.4 % colder than normal. *Id.* As set forth in Exhibit A-14, Mr. Tyler noted that the Company took actual weather and other variables from earlier months into consideration when it included the known revenues/costs from previous months' billings in setting the February and March factors. 2 Tr 74. He said that the impact of February's and March's weather could not be known or foreseen prior to setting GCR factors for the remainder of the GCR period.

b. Warning and Disallowance Recommendation

In his direct testimony, Mr. Coppola took the position that a gas utility, such as MGUC, should achieve an over or under collection in the range of $500,000. In response, Mr. Tyler testified that Mr. Coppola's proposed numerical standard fails to take into consideration any of the real world variables that affect GCR costs and revenues over much of which the Company has no control. 2 Tr 75. Those variables included basic economic indicators, the price of gas, and weather and customer migration. *Id.* Overall, Mr. Tyler argues that Mr. Coppola has provided no evidence or facts to support his proposed standard. He also argues that Act 304 allows for the recovery of reasonable and prudent expenses and that the Attorney General's position would result in otherwise reasonable and prudent expenses being disallowed. 2 Tr 76.

c. Incorrect Forecasts

In response to Mr. Coppola's testimony that the Company developed an "incorrect" forecast to sell to choice customers for the months of October to December, Mr. Tyler testified that "[b]ecause forecasts are predictions of the future, they are by definition not likely to be exactly on point." *Id.* He pointed to his belief that Mr. Coppola was referring to the fact that the Company's earliest forecasts of GCC load were not as accurate as later forecasts, especially when compared to the more refined GCR forecasts. *Id.*

Mr. Tyler testified that the GCC forecast for the early part of the 2010-2011 was off, in large part, because the Company was new to forecasting GCC load. 2 Tr 76. He argued that the breakdown of the GCC load between the various rate/service classes was determined by the Company's Forecasting Group for the first time in the GCR 2009-2010 plan. *Id.* He testified that,

> Forecasting for GCC was new, and the data was limited and very volatile. The forecast was prepared by looking at total customer counts by month and arriving at a rough average use-per-customer. At that time, the Forecasting Group did not have data available that was broken down by rate/service class. For purposes of filing, the total sales and customer counts were allocated based upon a rough approximation. The forecasting process for GCR Sales, on the other hand, was more structured than the GCC process. The forecasting Group had separate use-per-customer and customer count models for each of the various GCR classes. This is the reason that Residential GCC customers have different use-per-customers when compared to Residential GCR customers.
>
> Based on this experience, the company has since made significant improvements to its forecasting process by combining the GCR and GCC customer classes together and by preparing the use-per-customer count forecasts utilizing the same models. This change in the company's forecasting process has stabilized the use-per-customer amounts between GCR and GCC for each customer class and made it much easier to update the appropriate split between customer classes when the Company updates its forecast, based upon changes in GCC customer enrollments.

2 Tr 77.

He continued by saying,

> Mr. Coppola is having a hard time understanding when various actions took place. The GCR forecast was created for the GCR *plan* case, which was filed in December of 2009; however, the actual sales transactions did not occur until October through December of 2011 – nearly 12 months later.
>
> As previously discussed, although the forecast was not formally updated at the beginning of the 2009-2010 GCR period, the Company did take the actual collected revenues from the previous months into consideration when adjusting the subsequent monthly factors. Of course, the Company is not perfect and it continues revising and adjusting its processes on an ongoing basis. The Company's ability to set its monthly factors to more closely match costs and revenues has steadily improved over the course of the past three GCR periods, as recently acknowledged by the

> Commission in its December 6, 2011, Order in Case No. U-15700-R.

2 Tr 78.

In response to Mr. Coppola's testimony that weather is only a small part of the variance, Mr. Tyler acknowledged that weather is only one of the several variables that impact consumption. *Id.* He continued, however, by saying that the fact that the weather is only one of several variables does not support Mr. Coppola's assertion that the Company somehow could have known or controlled the other variables such that different adjustments to the GCR factor should have occurred. *Id.*

Finally, Mr. Tyler testified that the Company reviews its accounting methodologies and procedures on a continual basis to improve the accuracy of its reporting. *Id.*

d. <u>Transportation Customer Harm to GCR Customers</u>

In response to Ms. Quilico's testimony relating to a situation where GCR customers have the potential to be "harmed" by transportation customers utilizing their ATL balance, Mr. Tyler stated that, although a Transportation customer utilizing its ATL (excess gas stored in the Company's system) could theoretically force the Company to the daily market to secure additional supplies, this has rarely been the case. 2 Tr 80. Mr. Tyler emphasized that the supply needs are based upon multiple moving pieces that can include weather, day of the week, needs based on location, what the alternative suppliers are delivering to the system and operational flow needs. *Id.* He testified that MGUC typically balances the system with a combination of flowing supplies that include base load supplies, call and swing options, in addition to moving supplies to and from storage depending on the pieces listed above. *Id.* He also indicated that MGUC has contracts in place for leased storage that allow it to draw or inject supplies to or from its storage balances. *Id.*

e. Institution of a Daily Balancing or Modifying Transportation Tariff

Mr. Tyler testified that the Company analyzed Transportation customers on its system and determined that daily balancing for Transportation customers was not necessary. 2 Tr 81; Exhibit A-18. In addition, Mr. Tyler indicated that in July of 2011, representatives of MGUC met with Commission Staff to discuss operational issues that had arisen on its system due to the increase of GCC volumes. *Id.* The concerns of Staff in this matter were the same at the time of that meeting. 2 Tr 81-82. In response to Staff concerns, MGUC did an analysis to address whether Transportation customers might be "abusing" the system because MGUC does not have daily balancing. 2 Tr 82. The data related to MGUC's analysis demonstrated that for the months of January and February of 2011, Transportation customers scheduled and brought more gas into the system than they actually consumed, supplementing GCR supply and mitigating the Company's need to purchase incremental flowing supply. 2 Tr 82; Exhibit A-19. He noted that Transportation customers pay for the ability to store up to 5% of their contract MDQ. 2 Tr 82. The Transportation tariff rate includes the cost of storing the Transportation customer's ATL in MGUC's system. 2 Tr 82-83. Thus, according to Mr. Tyler, Transportation customers are utilizing the services that they are paying for and sharing the associated cost of storage along with GCR customers – neither service is subsidizing the other. 2 Tr 83. Mr. Tyler also noted that the Company can limit a Transportation customer's access to its ATL balance during system constrained and critical conditions by issuing an Operational Flow Order (OFO) pursuant to Section C3(c) of the Company's ratebook. 2 Tr 84. He testified that this provision gives MGUC the means to protect the GCR customers during the most sensitive conditions and that MGUC has exercised its tariff provisions in the past and will continue to do so if the need arises in the future. 2 Tr 84-85.

Mr. Tyler represented that the Company is not opposed to conducting a feasibility study to transition to daily balancing and testified that if such a study determines that daily balancing should be implemented, a general rate case filing would be necessary to properly allocate the underlying costs and services before daily balancing could be implemented. 2 Tr 83-84.

f. FPP Guidelines

Kent E. Huzzey also presented rebuttal testimony and sponsored Exhibit A-15, A-16 and A-17 in support of his rebuttal testimony. Mr. Huzzey's testimony focused on issues related to Mr. Coppola's criticism of MGUC's FPPs.

i. Information Same as Plan Case

Mr. Huzzey began his rebuttal by arguing that neither Mr. Coppola nor the AG raised concerns during the GCR Plan proceeding (Case No. U-16145) *before* the costs of the disputed purchases were reflected in the Commission-approved GCR factor for the 2010-2011 period, even though all of the important characteristics of the purchases (amount, price, etc.) were known quantities at the time the Company filed its GCR Plan for the 2010-2011 period in December 2009. 2 Tr 136-137. Mr. Huzzey argued that if the AG believed that these purchases were unreasonable, he could have voiced this concern before the costs of the purchases were included in the Commission approved GCR factor and charged to GCR customers. 2 Tr 137.

ii. Purchase of Winter and Annual Supply Concurrently

Mr. Huzzey testified that, contrary to the testimony of Mr. Coppola, FPP Guidelines do not prohibit MGUC from the practice of purchasing winter and annual supply. 2 Tr 138. He stated that MGUC can purchase a larger volume and obtain supply at a lower price by purchasing annual and winter supply concurrently. Then Mr. Huzzey described Mr. Coppola's testimony that FPP Guidelines limit the Company "to only one purchase per month" as "simply wrong." 2 Tr 139. He testified,

> The FPP Guidelines provide for multiple purchases in a month by (i) requiring the execution of a fixed price purchase during the next business day after the end-of-month contract settlement strips fall within a specified trigger point in the historical NYMEX data and (ii) providing for weekly reviews of the end-of-week strip prices and requiring an *additional* purchase whenever, in the same month, the weekly strip price drops $0.30 from the end-of- month settle price that had previously triggered a purchase. The first criterion is described in the FPP Guidelines on page 1, in the second paragraph, and again in the flowchart contained in Attachment 3. The second criterion is contained in a text box in Attachment 3 to the FPP Guidelines. Page 1 and Attachment 3 of the FPP Guidelines are, respectively, pages 1 and 2 of Exhibit AG-2.

2 Tr 139.

Mr. Huzzey argued that Mr. Coppola ignored the dual goals for annual purchases and winter-month purchases under FPP Guidelines when he asserted that the FPP guidelines allow only one purchase per month on page 9 of his direct testimony, but then argued that the Company failed to meet the FPP Guidelines' goal for annual purchases on page 8, lines 1 through 5 of his direct testimony. 2 Tr 139-140.

iii. October 6, 2008 Purchase

According to Mr. Huzzey, Mr. Coppola's misunderstandings and misinterpretations have caused him to assert that every purchase made after October 6, 2008, was both contrary to the FPP Guidelines and unreasonable. *Id.* Mr. Huzzey testified that the October 13, 2008, annual purchase and winter purchase detailed in Exhibit A-16 were a proper implementation of the $0.30 cent reduction in strip price criterion, authorized in Attachment 3 to the FPP Guidelines. *Id.* Mr. Huzzey stated,

> This is so because ***both*** the 12 and 24 month strips fell in the 1st quartile and the price of the 12 month strip had dropped $0.68 and the 24 month strip had dropped $0.634, thus meeting the second criteria of dropping more than $0.30. With both the 12 and 24 month strips falling more than $0.30, the Company was authorized to make the October 13, 2008 winter and annual purchases. Although this second criterion is described in the FPP Guidelines in Exhibit AG-2, page 2 and 4, Mr. Coppola fails to account for this criterion in his recommendations, while at the same time citing and emphasizing it on page 9 of his pre-filed testimony, lines 3 through 6.

2 Tr 140-141.

Based on this, Mr. Huzzey concluded, contrary to Mr. Coppola's assertion, it would not have been proper for the Company to defer the October 13, 2008, purchases to November 2008. 2 Tr 141.

iv. <u>October 27, 2008, and October 29, 2008, Purchases</u>

Mr. Huzzey also testified that he felt that a number of other matters in Mr. Coppola's testimony were incorrect. This included the testimony of Mr. Coppola that refers to the October 29, 2008, purchase as an "October purchase," when, according to Mr. Huzzey, it actually represented the settle of the November 2008 contract. 2 Tr 141. Further, in response to Mr. Coppola's testimony that the October 29th purchase should have been spread over the plan year, instead of December 2010 through February 2011, Mr. Huzzey testified that Mr. Coppola's assertions "ignore the physical constraints on the Company's system." 2 Tr 143. He argued that the Company's system has limited storage capacity. *Id.* Thus, all purchases must be made within the physical constraints of the Company's system. *Id.* For this reason, he argued, "I purchased slightly more winter-month fixed-price supply and slightly less annual fixed-price supply. With this limited variance, MGUC was able to meet the FPP Guidelines goal of acquiring 33% of the forecasted requirements for the 2010-2011 GCR period using fixed price purchases." *Id.* He continued by saying,

> The October 29th purchase was the last of the fixed price purchases for the 2010-2011 Plan Year. As such the Company had to endeavor to make certain that the purchase would not exceed the sales forecast and storage injection profile. Prior to this purchase, fixed price supply volumes amounted to between 86 and 97% of throughput for the months of June through September. There simply was no room for additional annual baseload supply. Additionally, the shoulder months of March, April, October, and November can be particularly problematic. After reviewing said profile, MGUC concluded that a December through February purchase would allow the Company to comply with the FPP

> Guidelines without placing the Company in the position of having excessive supplies in the shoulder and injection months.

2 Tr 143-144.

In response to Mr. Coppola's testimony that the annual and winter purchase made on October 27, 2008, were unreasonable, Mr. Huzzey pointed to three variables that he argued made the October 27th purchase reasonable: (1) the 12 and 24 month strip prices on the 24th of October fell in the first quartile and were the lowest strip prices for the entire previous two years, (2) the 12 and 24 month strips had moved down $0.44 and $0.33 respectively from the previous Friday's settlement, and (3) the average NYMEX settlement for the 12 month period preceding the run-up that commenced with the February 2008 NYMEX and ended with the July 2008 NYMEX settlement was $6.971. 2 Tr 141-142. According to Mr. Huzzey, the October 24th 12 and 24 month strip prices of $6.801 and $7.20 straddle that average price. 2 Tr 141-142.

Mr. Huzzey explained that if the October 27thth purchase had not been made, both the annual and winter purchases would have been triggered on the 29th and the same quantity of annual and winter-month supply would have been purchased. 2 Tr 145. He testified that the Company would then have purchased one remaining unit of winter supply the next time that conditions triggered a purchase pursuant to the FPP Guidelines. *Id.* The buy criteria in the FPP Guidelines would have been triggered again on November 3, 2008, at which time the remaining fixed price volumes for the 2010-2011 GCR Plan would have been purchased. 2 Tr 146. He noted that, as shown on Exhibit A-17, the additional purchases on the October 27, 2008, produced a net savings of $74,131 for GCR customers, when compared to what would have happened under the FPP Guidelines had the Company not executed the October 27 purchases. *Id.*

v. <u>Exceeding Guidelines</u>

According to Mr. Huzzey, Mr. Coppola also incorrectly testified that the Company's FPP exceeded the authorized FPP Guidelines because the guidelines authorized the purchase of 6,648,672 Mcf (33% of 19,946,216 Mcf) and the Company purchased 6,642,000 Mcf, inclusive of the October 29, 2008 purchase, which, he asserts is clearly within the guideline parameters. 2 Tr 142.

vi. <u>Premium Paid by MGUC Customers</u>

Mr. Huzzey disputed Mr. Coppola's assertion that MGUC customers paid an additional premium of $23.7 Million as a result of fixed price purchases. 2 Tr 144. First, he indicated that the "premium' asserted by Mr. Coppola is based on replacing every fixed price purchase with index purchases. 2 Tr 144. Mr. Huzzey calls this a "meaningless exercise" because the record in the 2010-2011 plan proceeding established that the Company had already made all of its fixed price purchases for the 2010-2011 period, and the Commission's order in Case No. U-16145 approved the plan as including these fixed price purchases. *Id.* He additionally went on to point to errors in the exhibits of the AG in support of this position. *Id.* Overall, Mr. Huzzey testified that Mr. Coppola's proposed disallowance is without merit because it "reflects what Mr. Coppola believes should have happened based upon his misunderstanding of the FPP Guidelines." 2 Tr 145.

Mr. Huzzey completed his testimony by reiterating that pricing movement was not foreseeable based on the information genuinely available at the time purchases were made and, therefore, the disallowance recommendation is without merit and should be dismissed. 2 Tr 147.

2. Attorney General

In response to Mr. Tyler and Mr. Huzzey's testimony, Mr. Coppola revised Exhibit AG-1, AG-5 and AG-7. 2 Tr 215-216. In addition, he concluded that the October 13, 2008, purchases were appropriately made under the FPP Guidelines and the October 27, 2008, purchases were prudent. 2 Tr 217.

As for the October 29, 2008, proposed FPP disallowance, Mr. Coppola continued to argue that the Company exceeded the FPP Guideline target by 562,000 Dth of which the October 29, 2008, purchase is the largest component. 2 Tr 217-218. He noted that the Company purchased only 4,379,683 Dth of annual fixed gas for the annual period of April 2010 to March 2011; noting that the target level in the FPP Guidelines was 5,000,000 Dth. 2 Tr 218; Exhibit AG-2. He, therefore, continued to maintain that the Company purchased too much winter supply and not enough annual fixed supply under the FPP Guidelines. 2 Tr 218. He argued that discovery responses of the Company represent the settlement month for the November 2008 contract as October 29. *Id.* According to Mr. Coppola, because the settlement month for the November 2008 contract was October 29th, only purchases on October 30th could qualify as November purchases. *Id.* He continued by saying that the purchase should have been made for a 12-month supply and not three months as shown on Exhibit AG-5. *Id.*

Based on this information, Mr. Coppola modified Exhibit AG-5 to remove the first two proposed disallowances, which then reflects the difference and excess cost the Company incurred to be $319,350. 2 Tr 219. The total amount of disallowance recommended by Mr. Coppola is $334,766 ($319,350 plus $15,416 disallowance from swing supply), leaving a total revised GCR over-recovery, including interest, to be refunded to customers in the amount of $3,787,110. *Id.*

POSITIONS OF THE PARTIES

MGUC argues that the proposed $3,458,727 over-recovery amount should be approved because MGUC acted reasonably and prudently and in accordance with the approved GCR Plan. MGUC Initial Brief, p 3-5. MGUC further argues that, while the rebuttal testimony of Mr. Tyler demonstrates that Transportation customers were not harming GCR customers, MGUC is not opposed to Staff's recommended study concerning the feasibility and rate impacts of daily balancing for transportation customers. MGUC Initial Brief, p 5-6.

MGUC attacks Mr. Coppola's recommended disallowance regarding the October 29, 2008, FPP as unsupported by the record, contrary to law and contradicted by his own testimony. In support of this position, MGUC begins by pointing to Mr. Coppola's abandonment of all but one of his recommendations regarding the Company's FPPs, and his testimony that significant portions of his testimony were no longer relevant. MGUC Initial Brief, p 6-7; 2 Tr 217, 220-225. MGUC continues by saying that Mr. Coppola's recommendation for a $319,350 disallowance must be rejected because his conclusions are inconsistent with his own testimony in the GCR Plan Case U-16145, and noting that,

> Mr. Coppola submitted testimony and an exhibit detailing these purchases in Case No. U-16145. All of the parties had an opportunity to cross-examine the witnesses. The ALJ and the Commission relied on this testimony in finding that the already-made fixed-price purchases were part of the GCR Plan, which was reasonable and prudent. This issue has been fully litigated and addressed with findings of fact in a valid MPSC Order.

MGUC Initial Brief, p 8-10.

MGUC continues by arguing,

> [a]lthough Mr. Coppola analyzed these purchases in Case No. U-16145 and found that they demonstrated that the FPP Guidelines had 'worked as indicated," Mr. Coppola now claims that he has reanalyzed these same purchases and found they were made contrary to the FPP Guidelines . . . Mr. Coppola has failed to cite or identify why he has reversed and contradicted his findings from the Plan case. Mr. Coppola has failed to cite or identify any new information that was not available during the Plan Case, which could explain his dramatic shift in position.

MGUC Initial Brief, p 9.

MGUC goes on to argue that Mr. Coppola's testimony and exhibits are not properly included in the record in this proceeding because they are an impermissible collateral attack on the GCR Plan, which was approved by the Commission's January 20, 2011, Order in Case No. U-16145. MGUC Initial Brief, p 9. MGUC argues that Act 304 requires the Commission to evaluate the reasonableness in the GCR Plan case:

> In its final order in a gas supply and cost review, <u>the commission shall evaluate the reasonableness and prudence of the decisions underlying the gas cost recovery plan</u> filed by the gas utility pursuant to subsection (3), and shall approve, disapprove, or amend the gas cost recovery plan accordingly.

MGUC Initial Brief, p 10 citing MCL 460.6h(6) (emphasis added).

MGUC notes that nothing in Act 304 states the Legislature considered the Plan proceeding to be "less important" than the reconciliation proceeding and, furthermore, nothing in Act 304 allows the Commission to put off or delay its evaluation of the reasonableness and prudence of the decisions underlying the GCR Plan until the reconciliation proceedings. MGUC Initial Brief, p 10. Additionally, MGUC distinguishes this reconciliation case from U-15704-R by saying that in U-15704-R, "the Commission refused to preclude review of an issue in the reconciliation proceeding simply because it *could have* been addressed in the plan proceeding," citing the following language of the Commission's March 8, 2012, Order in Case No. U-16704-R:

> MCL 460.6h(12) does not preclude review of an issue if all of the evidence supporting a disallowance could have been presented during the plan case; rather it mandates a reasonableness and prudence review if "the issue could not have been considered adequately" during the plan case. This broad language acknowledges that what happens during the progress of the actual plan year is all –important.

MGUC Initial Brief, p 10-11, citing Commission Order dated March 8, 2012, in Case No. U-15704-R.

Based on this difference, MGUC stresses,

> Unlike Case No. U-15704-R, the parties in this case have *already litigated* the issue of whether the fixed-price purchases for the 2010-11 GCR Period were reasonable and prudent. AS discussed *supra*, Mr. Coppola submitted testimony and an exhibit detailing these purchases in Case No. U-16145. All of the parties had an opportunity to cross-examine the witnesses. The ALJ and the Commission relied on this testimony in finding that the already-made fixed price purchases were part of the GCR Plan, which was reasonable and prudent . . . This issue has been fully litigated and addressed with findings of fact in a valid MPSC Order.

MGUC's Initial Brief, p 11.

MGUC argues that the doctrine of collateral estoppel bars re-litigation of an issue in a new action arising between the same parties when the earlier proceeding resulted in a valid final judgment and the issue in question was actually and necessarily determined in that prior proceeding. MGUC Initial Brief, p 11. MGUC goes on to cite 1 Restatement Judgments, 2d, Section 27, p 250, for the position that issues can only be re-litigated if new evidence or a showing of changed circumstances render the earlier result unreasonable. *Id.* MGUC then says that Mr. Coppola provided no testimony that new evidence or changed circumstances are present to necessitate re-litigation of issues already litigated fully in the Plan case. MGUC Initial Brief, p 11-12.

MGUC continues by asserting that Mr. Coppola's testimony was inconsistent and lacked any evidence, saying that Mr. Coppola, on one hand, criticizes MGUC for a variance of approximately 9% from FPP Guideline targets but then later testifies that FPP Guideline targets are not requirements and, therefore, "subject to the exercise of management discretion if circumstances justify deviating from those targets." MGUC Initial Brief, p 12; 2 T 217-218, 2 Tr 192. MGUC argues that "Mr. Coppola does not explain how a variance from the FPP Guidelines may be discretionary in one instance, and yet be the sole basis for determining reasonableness and prudence in another." MGUC Initial Brief, p 12-13.

MGUC then asserts that MCL 460.6h (12) requires a comparison of the actual revenues collected by the Company pursuant to the implementation of the

MPSC-approved GCR factors with the actual booked cost of gas sold. MGUC Initial Brief, p 15. MGUC argues that Mr. Coppola's proposed disallowance of $319,350 for the October 29, 2008, fixed-price purchase is based solely upon imputing fictitious "NYMEX Cost," which is significantly higher than that MGUC *actually paid and booked*. *Id.* Thus, MGUC argues, "Mr. Coppola's proposed disallowance for the October 29, 2008, fixed-price purchase must be rejected because it contravenes the MCL 460.6h (1) requirement to reconcile "actual costs" with expenses and because a comparison of Mr. Coppola's proposed alternative with the actual costs incurred by the Company would not support a disallowance." MGUC Initial Brief, p 16.

Next, MGUC argues that the record does not support the AG's claim that the price of certain swing purchases was excessive and points to Mr. Coppola's lack of evidence offered into the record to support his assumption that additional lower-priced swing supply was readily available. MGUC Initial Brief, p 16-17. MGUC goes on to cite the testimony of Mr. Huzzey (that the Company did not have the option of purchasing additional swing supply capacity from the three suppliers cited by Mr. Coppola), and Mr. Hollewa (that the use of swing purchases was "well reasoned and very effective") to refute the testimony of Mr. Coppola. MGUC Initial Brief, p 17-18.

Finally, MGUC calls Mr. Coppola's recommended Commission "warning" overly vague, unsupported by the record, and contrary to law. MGUC Initial Brief, p 18-22.

The AG, as can be gleaned from testimony of its witness, Mr. Coppola, recommends that the Commission reduce recovery of $3,870,000 related to an October 29, 2008, purchase of natural gas for deliveries during the winter season in 2010-2011 by $319,350 for a total recovery by the Company of $3,550,650. According to the AG, MGUC's October 29, 2008, purchase of 450,000 Dth/Mcf exceeded the FPP guideline cap for winter season purchase, but would have conformed to the FPP cap for 12-month purchases (April 1, 2010 through March 31, 2011). AG Initial Brief, p 16-18. The AG argues that had MGUC purchased no more than the FPP ceiling of 1.7 Bcf and, instead, under MPSC-approved guideline purchased the 450,000 Mcf/Dth for deliveries over the whole 2010-2011 GCR period, it would have saved $319,350. AG Initial Brief, p 17. The AG asserts that when the average NYMEX cost MGUC would have paid if the Company had purchased the same quantity of natural gas for deliveries from April 1, 2010 through March 31, 2011, is compared to the net costs reported by MGUC, with the NYMEX price implicit in those net costs, MGUC could have saved $319,350. AG Initial Brief, p 17; Exhibit AG-5 (Revised). In response to the Company's claim that it would have been impractical to buy 450,000 Dth/Mcf over 12 months, the AG points to four purchases each totaling 1,095,000 Dth/Mcf, noting that each of those purchases was for 12 months and each of those purchases, when divided by 364 days, would have resulted in approximately 3,000Dth/Mcf per day. AG Initial Brief, p 18; see Exhibit A-7. The AG concludes that since spreading out the purchase over 12 months would have resulted in delivery of 1,200 (and up to 2,400) Dth/Mcf per day, it is not credible to claim that a supplier would be willing to deliver 3,000 Dth/Mcf per day at 12-month NYMEX strip prices plus or minus the applicable basis, but would be unwilling to deliver 40% of the quantity (1,200 vs. 3,000). *Id.*

The AG also argues that the Commission should deny recovery of $15,416 because the price for one of MGUC's six swing purchases was not just and reasonable. *Id.* The AG rejects the Company's position that when the Company purchased the last package from Supplier 4, Supplier 2, and Supplier 1 were already under contract for fixed price supplies and did not submit bids to increase the volume offered as swing supply, and Supplier 15, for reasons not shared with the Company, also did not submit a bid to increase its tendered volume. AG Initial Brief, p 19-20. The AG argues that MGUC has a duty under MCL 460.6h (6) to minimize its booked costs of gas sold. AG Initial Brief, p 20. Based on this duty, it asserts that MGUC should have contacted Supplier 1, 2, and 15 to see if it could obtain additional capacity at the same or better charge for delivery during the same period. *Id.*

Finally, the AG requests that the Commission warn MGUC that it should make more efforts to minimize its GCR under and over recoveries because large under- or over-recoveries shift costs to or from ratepayers in a current GCR period from or to ratepayers in the next GCR period and sends incorrect price signals to customers attempting to minimize their own natural gas bills. AG Initial Brief, p 21.

MGUC replied that "[n]o one disputes that the total amount of fixed-supply was consistent with the goal set by the FPP Guidelines." MGUC Reply Brief, p 2.

It also argued that "[i]t is also undisputed that all of the information concerning the fixed-price purchases was known and vetted by the AG and his witness Mr. Coppola in the plan proceeding." MGUC Reply Brief, p 3. The Company further argues that the October 29, 2008, FPP was reasonable and only varied slightly (an approximate 5%) from the FPP Guideline targets for winter/annual supply. *Id.* The Company says that the October 29, 2008, fixed-price purchase represented the last such purchase for the 2010-2011 GCR Period, leaving the Company with no option of purchasing annual and winter volumes concurrently to attract more favorable bids. MGUC Reply Brief, p 3-4. MGUC asserts that the AG's proposed alternative, which is to purchase less than the required minimum quantity (1,200 Dth per day instead of 3,000 Dth per day) would have caused a variation from the FPP Guidelines' minimum Quartile Analysis Purchase unit by over 60% for 365 days, which is much larger than that which resulted from the October 29, 2008, purchase. MGUC Reply Brief, p 5-6. Further, MGUC points out that the AG presented no evidence that an option to purchase 1,200 Dth/day annual purchase was actually available or what the price might have been for such a small quantity of supply. MGUC Reply Brief, p 6. Additionally, MGUC argues that Mr. Coppola's estimated cost of his proposed alternative annual purchase was significantly higher than the actual booked cost of October 29, 2008, which would have incurred and charged more costs to GCR customers during the 2010-2011 Period. MGUC Reply Brief, p 7-8. Finally, MGUC points to the lack of proffered evidence on the part of the AG showing how the existing competitive bidding process fails to meet its "duty to call," and again says the

"Company can only contract with those who submit bids." MGUC Reply Brief, p 9.

The AG replies by saying that the fact that a utility must exercise discretion in implementing its MPSC-approved purchasing guidelines does not, standing alone, justify rejecting a disallowance related to MGUC's decision to exceed its guidelines. AG Reply Brief, p 1-2. Along the same lines, the AG argues that the fact that MGUC's MPSC-approved purchasing guidelines are targets does not belie a disallowance related to MGUC imprudently and unreasonably exceeding a purchasing guideline and further argues that MGUC presented no testimony claiming that it consciously exercised discretion to buy winter fixed-price gas in a quantity that exceeded the guideline cap. AG Reply Brief, p 3-4.

DISCUSSION

This matter was brought before the Commission pursuant to MCL 460.6h.

As an initial matter, the "re-litigation" of the reasonableness and prudence of the fixed price purchases is at the fore of this case. As discussed above, MGUC takes issue with the AG's challenge to its fixed price purchases in this reconciliation matter when it already fully litigated those exact same fixed price purchases in the Plan case. This ALJ relied on the Commission's March 8, 2012, Order in U-15704-R (U-15704-R Order) when declining to strike the testimony of Mr. Coppola which reversed his previous approval of MGUC's fixed price purchases in the Plan case. Although MGUC makes an effort to distinguish this case from U-15704-R, this ALJ finds that there is no real distinction. In U-15704-R, the Commission held, "the Commission is not prohibited from reviewing arguments brought to light . . . in reconciliation cases even where *the date, price and volume information pertaining to the disputed purchases was included in the record in the plan case."* U-15704 Order, p 9 (emphasis added). The Commission went on the say that "Costs and contracts *approved in the plan case are not off limits in the reconciliation case." Id* at 10 (emphasis added). The Commission took this position because the "reconciliation affords the Commission and ratepayers the opportunity to analyze what actually happened, and it is difficult to overestimate the importance of the concept of review." U-15704-R Order, p 9. Because the facts in this matter are very similar to those in U-15704-R (all pertinent information was known and addressed during the GCR Plan case), this ALJ is bound by the rationale set forth in that matter and rejects MGUC's argument that the testimony of Mr. Coppola, which may diverge from his testimony in the Plan case, should be stricken or otherwise disregarded.

Although this ALJ finds that Mr. Coppola's testimony was properly part of the record in this matter, this ALJ is not persuaded by the AG's disallowance arguments. This ALJ agrees with MGUC that the AG's change in position from the time of the GCR Plan case utilizes the benefit of hindsight at the time when factors related to the weather and the economy were unusual. It cannot be overlooked that the AG, before the benefit of hindsight, found that the Company's plan was reasonable and prudent, having all of the same information available as was available for this reconciliation hearing. Further, this ALJ finds that the AG lacked sufficient evidence to support a basis for the reversal of position from the time of the Plan case to this case.[4]

This ALJ finds that the Company's efforts in setting the monthly GCR factor in an effort to avoid an under- or over-recovery were reasonable and prudent. Similarly, this ALJ finds that the Company's efforts to improve forecasting are ongoing. Finally, this ALJ finds the variance between FPP Guideline targets and actual purchases made by the Company to be reasonable and prudent based on weather, economy, and storage concerns at the times of the purchases.

In light of the Company's willingness to conduct a feasibility study to determine whether a transition to daily balancing should be implemented, this ALJ finds that such a study is reasonable. While there were no cited instances where an EUT customer chose to withdraw its entire ATL balance without providing MGUC notice and, thus, no cited instances where the Company has been forced to buy incremental flowing supplies at current market prices (which costs would be charged to the GCR customer), avoiding such a scenario is preferred.

CONCLUSION

From the record as a whole, it appears that MGUC's actual expense for gas sold during the GCR year ending March 31, 2011, were incurred through reasonable and prudent actions previously approved by the Commission in the

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[4] This ALJ finds it noteworthy that Mr. Coppola, the AG's only witness, testified that while he is critical of the actions of the Company, he has no personal experience purchasing natural gas on the NYMEX, has never personally engaged in monthly and daily planning and supply for a gas utility, and has never personally made a natural gas purchase pursuant to the fixed price guidelines. 2 Tr 228-230.

corresponding GCR Plan case. For the reasons set forth above, this ALJ recommends that MGUC's Application be approved and that MGUC be authorized to roll in the cumulative over-recovered balance of $3,458,727 into its 2011/2012 GCR plan period for gas costs. Further, this ALJ recommends that a feasibility study be conducted to determine whether a transition to daily balancing would protect GCR customers.

MICHIGAN ADMINISTRATIVE HEARING SYSTEM
For the Michigan Public Service Commission

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Theresa A. Sheets
Administrative Law Judge

September 14, 2012
Lansing, Michigan
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